UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/1991/SR.11
28 January 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE RIGHTS OF THE CHILD

First session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 7 October 1991, at 3 p.m.

Chairman: Mrs. BADRAN

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GE.91-17731/4158B

The meeting was called to order at 3.10 p.m.

MATTERS RELATING TO THE COMMITTEE'S METHODS OF WORK IN RESPECT OF THE CONSIDERATION OF REPORTS TO BE SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 44 OF THE CONVENTION (agenda item 7) (continued) (CRC/C/L.2)

1. Mrs. SANTOS PAIS proposed that the word "substantive" should be deleted from the second sentence of paragraph 2 of the introduction, since it might give the impression that reports should deal only with the articles appearing in part I of the Convention. She noted that part II began with article 42, which dealt with the dissemination of the Convention and which, in her view, was one of the most important articles. States parties should be aware that the Committee might also ask them questions about the measures they had taken to make the Convention widely known to adults and children alike.

2. The CHAIRMAN said that, if she heard no objection, she would take it that the Committee agreed to Mrs. Santos País' proposal to delete the word "substantive" from paragraph 2 of the introduction.

3. It was so decided.

4. The CHAIRMAN informed the Committee that she had asked the Secretariat to distribute copies of the report on the first Ad Hoc Inter-Agency Meeting on the Implementation of the Convention on the Rights of the Child and the report on the special meeting held with non-governmental and other organizations on the same question. The informal document prepared by a member of the Secretariat could not be distributed, since it was not an official document of the Committee.

5. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) explained that only the documents that had been distributed at the beginning of the session, including document CRC/C/L.2, were considered to be official documents of the Committee. The document mentioned by the Chairman had not been published as an official document, but the Secretariat could provide a copy to members who so requested.

6. Mr. HAMMARBERG said that, although he did not wish to interfere in the procedures that the Secretariat had established for the approval and distribution of documents, he would like to have confirmation that any expert could request and obtain a photocopy of documents he wished to bring to the attention of other members of the Committee, in order that the Committee's work should not be delayed. The members of the Committee appeared to agree that the document submitted informally by the Secretariat contained useful proposals on ways to make the general guidelines for the preparation of reports more specific and some means should be found to take advantage of them. One possibility would be to request some members of the Committee, such as Mrs. Santos País and Mrs. Belembaogo, to prepare, with the help of the Secretariat, a revised version of the guidelines that would take account of all the comments made during the discussion and the ideas suggested in the informal document.

7. Mr. MOMBESHORA, referring to paragraph 3 of document CRC/C/L.2, wondered whether the Committee should not wait for initial reports to be submitted before formulating guidelines for the preparation of periodic reports in order to determine whether the previously established guidelines had been properly applied or whether new ones should be formulated.

8. Mr. KOLOSOV said that paragraph 3 reflected that idea exactly, since it stated that the Committee intended to formulate guidelines for the preparation of periodic reports, namely, reports prepared at five-year intervals after the initial report.

9. Mrs. SANTOS PAIS said she believed that Mr. Hammarberg was proposing that a drafting group or a working group should be set up to prepare revised draft guidelines, taking into account all the comments and suggestions made during the discussion and the proposals contained in the document prepared by a member of the Secretariat and clearly indicating how States parties should provide the Committee with information. She found that idea to be a sound one and she proposed that Mr. Hammarberg and Mr. Kolosov should also be part of the drafting group.

10. The CHAIRMAN said that, if she heard no objection, she would take it that the Committee adopted the proposal that a drafting group composed of Mrs. Santos País, Mrs. Belembaogo, Mr. Hammarberg and Mr. Kolosov should be set up to prepare a revised version of the introduction to the draft guidelines which would take account of the comments made during the general discussion and the proposals contained in the informal text prepared by a member of the Secretariat.

11. It was so decided.

12. The CHAIRMAN invited the members of the Committee to consider section A of document CRC/C/L.2, which dealt with basic measures of implementation.

Status of the Convention (para. 5)

13. Mrs. BELEMBAOGO said she believed that States parties should also be asked to provide information on the measures taken to make the dissemination of existing or planned legislation on behalf of children widely known in order to promote its implementation. It should be borne in mind that, in many countries, the laws in force were often not implemented for the simple reason that the persons or bodies that would be in charge of implementing them were not aware of their existence. Since the principle that ignorance of the law was no excuse was not really applicable in countries with a very high illiteracy rate, such measures of dissemination became extremely important.

14. Mgr. BAMBAREN GASTELUMENDI said he also wished to stress the need to invite Governments to plan their implementation of the Convention. Various means might be envisaged, but it was important above all for resources to be set aside in the annual budget for conducting activities designed to implement the Convention.

15. Mrs. SANTOS PAIS said that she endorsed Mrs. Belembaogo's proposal, for it was very important that States parties should provide information not only on the measures taken to bring their legislation and policy into line with the provisions of the Convention, but also on the measures that made it possible for the rights set forth in the Convention to be exercised and, consequently, on the measures aimed at making known the legislation and policies adopted to that end.

16. She also agreed with Mgr. Bambaren Gastelumendi's idea of inviting States to set up mechanisms to monitor the implementation of the Convention, such as committees or commissions whose members would include representatives of various governmental and non-governmental organizations having direct contact with the situation of children, and to describe the financial or budgetary measures taken to finance such activities. She also noted that although articles 42 and 44, paragraph 6, of the Convention were cited, only the measures set forth in article 44, namely, the need for States to make their reports widely available in their own countries, were mentioned explicitly. However, article 42 was one of the most important provisions of the Convention and it should therefore also be indicated explicitly that States parties must describe the specific and appropriate means they used to make the principles and provisions of the Convention widely known to adults and children alike.

17. Mr. HAMMARBERG said that he endorsed Mrs. Santos País' view; it was essential to mention the contents of both articles, which dealt with two very specific aspects of the promotion of the Convention. In that connection, he was not sure whether the title of paragraph 5 was appropriate and whether it might not be better to replace it by "Promotion of the Convention", for that was exactly what the paragraph referred to. It should also not be forgotten that, according to article 4 of the Convention, which was rightly cited in that paragraph, with regard to economic, social and cultural rights, States parties must take all necessary legislative and other measures "to the maximum extent of their available resources" and "within the framework of international cooperation". The first expression was open to interpretation, but it was clear that international cooperation meant both the technical assistance required and requested by certain countries and the transfer of resources between countries in the interest of children. It might be concluded that the kinds of information to be provided by States parties pursuant to article 4 should also be further explained.

18. Mrs. SANTOS PAIS said she believed that paragraph 5 gave a preliminary idea of the information States parties should provide pursuant to articles 4, 42 and 44 of the Convention. However, the idea of international cooperation with a view to protecting the rights of the child permeated the Convention, first in article 4 concerning the achievement of economic, social and cultural rights and later in other articles, especially those in which States parties were invited to promote the conclusion of bilateral or multilateral agreements or accession to existing agreements (art. 11) or promote the exchange of appropriate information in various fields (art. 23). It would in fact be important to refer to international cooperation in paragraph 5 and she would like to know her colleagues' opinion on that point.

19. Mrs. EUFEMIO said that, unlike most of the following paragraphs, in which States parties were asked "to provide relevant information, including the principal judicial, administrative or other measures in force", which probably included financial or budgetary measures, paragraph 5 stressed the coordination of policies relating to children. She would like to know whether the goal of paragraph 5 was different from that of the other paragraphs and whether that goal was basically to ask States parties to indicate how they coordinated all the measures taken in all the areas mentioned in the subheadings covering the various articles of the Convention.

20. The CHAIRMAN said that paragraph 5 did mention article 4 of the Convention, which was of a more general nature than the other articles, since it dealt with all appropriate measures to be undertaken in order to implement the Convention. The other paragraphs dealt with more specific questions. However, it was customary to present the general aspects of a question before developing its specific aspects, which probably explained the difference noted by Mrs. Eufemio.

21. Mr. SHAW (World Food Programme) noted that the paragraph under discussion referred to article 4 of the Convention, which stated, in particular, that "with regard to economic, social and cultural rights", States parties would undertake the measures referred to in the Convention's provisions "to the maximum extent of their available resources". In his view, the Convention rightfully stressed economic considerations, which were the cause of many of the obstacles to the achievement of the rights of the child, as evidenced by the drop in household income and structural adjustments in developing countries, whose immediate victims were the poor and their children. The provisions of article 4 thus also meant that the Committee should attach as much importance to economic as to social and cultural rights by closely examining the expenditures by States parties for services in the public sector and the flows of international cooperation they enjoyed in order to determine whether both were appropriate and sufficient to achieve the rights of the child. Those points should be included in the general guidelines for the submission of reports by States parties.

22. The CHAIRMAN said it was her understanding that the Committee wished to entrust the drafting group with the task of redrafting the text of paragraph 5 in order to take the following elements into account: the title of the subheading should highlight not only the status of the Convention, but also the need to promote its implementation; the text of the paragraph should stress the need to examine public expenditures for programmes for children and the use of flows of international cooperation; and a new subparagraph should be added mentioning the means available to make the principles and provisions of the Convention widely known, in accordance with article 42.

23. It was so decided.

Paragraphs 6 and 7

24. Mrs. SANTOS PAIS noted that paragraph 6 was based on article 1 of the Convention, which defined what was meant by a child: its provisions established the framework in which the Convention should be implemented and served as the starting-point for the Committee's consideration of how it was

being implemented. Thus the Committee should first ask States parties to specify at what age majority was attained under their national legislation and then indicate the minimum legal age for each of the cases mentioned in paragraph 6 of the guidelines. She believed that it would be more logical and wiser for the list of cases to begin with those in which the Convention explicitly mentioned a minimum age - for example, admission to employment (art. 32), criminal liability (art. 40, para. 3), enlistment in the armed forces and direct participation in hostilities (art. 38) - and then go on to those where the age consideration was implicit, such as release from compulsory schooling, consent to sexual relations, consent to marriage, etc.

25. Mgr. BAMBAREN GASTELUMENDI said that States parties should also be asked to provide information on how the legislation and regulations interpreted the expression "the best interests of the child" within the meaning of article 3, since that was also one of the general considerations of the Convention. He found the list of cases to which the Committee was drawing the attention of States parties to be incomplete, for, although some secondary considerations, such as legal or medical counselling without parental consent, were mentioned, other critical situations were omitted: adoption, abduction, ill-treatment, sexual exploitation and the situation of disabled children. He also did not see the connection between some of the cases listed and the idea of a minimum age: a minimum age should be mentioned only in cases where it was relevant. Generally speaking, perhaps the Committee should bear in mind the fact that the definition of a child given in article 1 had been adopted following negotiations in which some of the participants had insisted that a child should be considered a human being from birth and enjoy protection before as well as after birth.

26. Mrs. EUFEMIO pointed out that, despite the fact that the preamble to the Convention referred to the child's need for protection before as well as after birth, it was no less true that the question of the rights of the foetus was a controversial one and it would probably be better to allow States parties to decide how to handle that issue. She agreed that "the best interests of the child" was a primary consideration and wondered whether the Committee should not simply state that general principle rather than list the specific cases where a minimum age might be regarded as a standard for determining the best interests of the child.

27. Mr. HAMMARBERG said that the Committee should not take up the issue of the rights of the child before birth, since States parties had not assumed any such obligations under the Convention. If the Committee had doubts on the subject, it should begin by requesting a special study on that important and sensitive issue which would retrace the history of the negotiations that had led to the Convention and bring out the divergent views expressed at the time. The age criterion was derived from the definition of the child contained in article 1 of the Convention. However, the age of majority did not always coincide with the minimum legal age set for certain acts or activities, since many societies tried to give children complete freedom as soon as possible, while protecting them in certain situations where their welfare would be threatened because they had not attained a certain age. Thus it would be interesting to know how the States parties had solved that problem. In his view, the age criterion was relevant in all the cases listed in paragraph 6.

28. The CHAIRMAN asked whether the Committee wished to keep to the list contained in paragraph 6 and, if so, whether it would agree to refer to a "legal age" rather than a "minimum age" in order to take Mgr. Bambaren Gastelumendi's objection into account.

29. Mrs. EUFEMIO said she believed the list was incomplete and that the age of eligibility for social security benefits, for example, or a more general phrase such as "and other cases of the kind" should be added at the end.

30. Mrs. SANTOS PAIS said that it would be better to retain the reference to a minimum age, since some provisions of the Convention did invite States parties to set a minimum age in certain cases, for example, regarding admission to employment or to hazardous employment, criminal liability, etc. However, age was not a decisive criterion for the achievement of certain rights, although it would be interesting to have such information to find out how States parties were implementing some provisions of the Convention and whether it was possible to improve that implementation. Perhaps the list contained in paragraph 6 should be revised with that in mind.

31. Mgr. BAMBAREN GASTELUMENDI said that a minimum age should be mentioned only in relevant cases. Age was, for example, not a factor in connection with release from compulsory schooling, since, in many countries, an individual had to complete the primary school cycle regardless of the age at which he did so.

32. Mr. KOLOSOV said that compulsory schooling was taken in some countries not as an obligation to complete the primary school cycle, but as an obligation to be schooled until a particular age, which was 16 years in the case of the Soviet Union, for example. He believed that ultimately there could be a minimum legal age in every one of the cases listed in paragraph 6 and that it might be wise to invite States to set a minimum age in all the cases where that was not requested.

33. The CHAIRMAN, speaking as a member of the Committee, said that, in her view, the minimum age criterion was significant, since it made it possible to determine in different cases the point at which a child might be treated as an adult. Release from compulsory schooling was one obvious example. As to the age of admission to employment, whether part-time or full-time, she reminded the members that the ILO Conventions set that age in both cases, even if some countries did not have a minimum age for part-time employment.

34. Mr. KOLOSOV, supporting the Chairman's comment, said that one example was the age of marriage in the Soviet Union, which was 18 for everybody and could be lowered to 16 with parental consent.

35. Mrs. EUFEMIO, referring to Mr. Kolosov's example, said that, in some countries and for certain acts and activities, the minimum legal age was not the same for boys as for girls, in particular as far as consent to marriage was concerned.

36. Mgr. BAMBAREN GASTELUMENDI said that he would bow to those arguments and agree to retain the reference to a minimum legal age in the list contained in paragraph 6, but he did believe that the age of eligibility for social security benefits or social welfare should be included in the list.

37. Mr. MOMBESHORA said he did not object to asking States to indicate a minimum legal age for each of the cases listed, but pointed out that, in a single case, the minimum age might vary widely from one country to another, according to different societies' perception of the child. The Committee would have to take careful account of those cultural differences when it considered reports by States parties.

38. Mrs. SANTOS PAIS said she believed that the Convention provided for some flexibility in that regard, since some provisions did not refer to a minimum age, but to the maturity of the child. With regard to the list of cases in paragraph 6, she suggested that the reference to detention in prison should be deleted, since it was covered by the more general reference to deprivation of liberty, which also covered arrest, imprisonment and even psychiatric confinement. Moreover, if the Committee referred specifically in the list to detention in prison, it might be implying that such detention was not deprivation of liberty.

39. The CHAIRMAN asked whether the Committee agreed that the age of eligibility for social security benefits should be added to the list and that detention in prison should be deleted.

40. Mr. KOLOSOV said that he hesitated to follow Mrs. Santos País along those lines and pointed out that deprivation of liberty and detention in prison were not always the same. In the Soviet Union, for example, some children were placed in reform schools, which were not places of detention strictly speaking.

41. Mr. HAMMARBERG said that he endorsed Mr. Kolosov's view that the distinction between deprivation of freedom and detention in prison should be maintained.

42. The CHAIRMAN noted that the Committee thus wanted only to add "eligibility for social security" between "deprivation of liberty" and "consumption of alcohol".

43. Mrs. SANTOS PAIS recalled that she had proposed that the age of majority should be referred to in the first sentence.

44. Mr. KOLOSOV said that, under the Convention, a child was every human being below the age of 18 years. If the age of majority in a particular country was 21 years, for example, that did not change the point of view of the Committee, which was not empowered to look into the situation of persons who were no longer children according to the Convention.

45. Miss MASON noted that, in some countries, the age of majority was 18 years, whereas the child was defined as a human being below the age of 16 years. That meant that, between ages 16 and 18, there was a gap with which the Committee should concern itself.

46. Mrs. SANTOS PAIS said she agreed with Mr. Kolosov that the Convention did not apply to persons over 18 years of age who might not be considered adults. However, article 41 stipulated that the Convention should not affect any provisions which were more conducive to the realization of the rights of the child, might be contained in the law of a State party and could be taken into account in evaluating a report.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

47. Mrs. SANTOS PAIS proposed that the beginning of paragraph 6 should be amended to read: "In particular, States parties are requested to provide the age at which majority is attained, the legal minimum ages ...".

48. Mr. HAMMARBERG recalled that it had been decided that the Committee would request a drafting group or a working group to amend the wording of document CRC/C/L.2 in accordance with the comments made in plenary. He would like paragraph 6 to be more open and to refer to "other minimum ages of relevance".

49. Mgr. BAMBAREN GASTELUMENDI, referring to the informal summary of the main provisions of the Convention that had been distributed to the members of the Committee, noted that the Spanish version was incorrect, since it said that a child was recognized to be a human being "desde su nacimiento" (from birth), which appeared neither in the English text nor in the French text of the summary. He would therefore like the Committee to take note of that error.

50. The CHAIRMAN requested the working group to amend the text of paragraph 6 in the light of the comments of the members of the Committee.

Paragraph 7

51. The CHAIRMAN noted that subparagraph (b) should refer to "art. 3" and not to "art. 40".

52. Mrs. SANTOS PAIS, supported by Mr. HAMMARBERG, said she believed that subparagraph (d) ("The administration of juvenile justice") was not as fundamental as the three preceding subparagraphs and that it should be placed elsewhere. In view of the paragraph's importance, it should also be given a title. Finally, a reference to articles 5 and 18 of the Convention should be added to subparagraph (c).

53. Mrs. BELEMBAOGO said that subparagraph (b) referred not only to article 3, but also to articles 9, 18 and 21 of the Convention. "The best interests of the child", a key concept, might serve as a title for paragraph 7. States should also be asked, in paragraph 7 and in the other paragraphs, not only which measures were in force, but also which measures (legislation or programmes) were being planned. Since periodic reports would be submitted at five-year intervals only, the Committee must be able to assess States' efforts to implement the Convention over time.

54. Mgr. BAMBAREN GASTELUMENDI said he agreed with Mrs. Belembaogo's suggestion that "the best interests of the child" should be the title of paragraph 7 and with the references to articles 5, 9, 18 and 21 proposed by Mrs. Santos País and Mrs. Belembaogo.

55. Mrs. SANTOS PAIS welcomed Mrs. Belembaogo's proposal, since it was essential to know which measures were being planned by States. The reference to planned measures, which had already been included in paragraph 5, should definitely be repeated in paragraph 7.

56. Mr. HAMMARBERG said that he also agreed with that idea, but pointed out that the Committee had to be able to distinguish between plans and dreams.

57. Mrs. BELEMBAOGO agreed that it would be out of the question for the Committee to take decisions based on States' mere intentions.

58. Mrs. SANTOS PAIS proposed the title "Basic principles" for paragraph 7.

59. The CHAIRMAN said that the working group would amend paragraph 7 in accordance with the Committee's recommendations.

Paragraph 8: Fundamental civil rights

60. Mrs. EUFEMIO said she believed that the heading "Fundamental civil rights" should include the concept of preservation of identity, as referred to in subparagraph (b) of paragraph 9 entitled "Parental or foster care and adoption".

61. Mrs. SANTOS PAIS said she agreed with Mrs. Eufemio that preservation of identity should be placed under the heading "Fundamental civil rights". She also proposed that reference should be made in subparagraph (b) on freedom of expression to the right of peaceful assembly provided for in article 15 of the Convention. Lastly, subparagraph (b) should refer to article 17 of the Convention, which dealt with children's access to information.

62. Mr. MOMBESHORA, referring to subparagraph (c) on freedom of thought, conscience and religion, said that the right and duty of parents to guide children in exercising that right (art. 14) might at times conflict with the concern to protect the interests of the child, which was the very core of the Convention. In that connection, he referred to the example of cases of refusal to vaccinate children for religious reasons, which might have harmful effects on their health.

63. Mr. HAMMARBERG said that the classification of various articles of the Convention in terms of the different headings of the draft guidelines might appear artificial at times. However, such a division was not always without logic and would have to be accepted at times as a compromise solution. However, he agreed with Mrs. Eufemio that the principle of preservation of identity (para. 9 (b)) should appear under the heading "Fundamental civil rights" (para. 8).

64. Mgr. BAMBAREN GASTELUMENDI said that the concept of fundamental civil rights differed according to region. Thus, the right to life, which was widely protected in Europe through social legislation, for example, was far from being guaranteed in the third world countries where there was significant malnutrition, insufficient medical care and high infant mortality. He therefore proposed that that right should be included in the list of fundamental civil rights, with a reference to article 6 of the Convention.

65. The CHAIRMAN, summing up the discussion, said that the members of the Committee had proposed that subparagraph (a) concerning name and nationality should include a reference to article 8 of the Convention, which dealt with identity; that paragraph 8 should refer to the right to survival and to development, which was set forth in article 6 of the Convention; and that reference should also be made to article 17 of the Convention in connection with freedom of expression (subpara. (b)). In addition, one member of the Committee had raised the possibility of conflict between the parents' religious convictions and the best interests of the child, while another had felt that it would be difficult, for the time being, to avoid some overlapping.

66. She suggested that the drafting group should prepare a new version of the text of paragraph 8 taking those considerations into account.

67. It was so decided.

Paragraph 9: Parental or foster care and adoption

68. Mrs. SANTOS PAIS said that the concept of family differed according to country, region and culture and that it would be helpful to have a definition of it. She would prefer to replace the concept of children without families (subpara. (h)) by the concept of children deprived of a family environment. She also proposed that the concepts of parental guidance (subpara. (a)) and parental responsibilities (subpara. (f)) should be combined. Since the idea of abduction of, sale of, or traffic in children (art. 35) was not alien to the concept of illicit transfer and non-return (subpara. (e)), she suggested that a reference should also be made, in that subparagraph, to article 35 of the Convention. Article 27, paragraph 4, of the Convention, which dealt with the principle of the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, should also be mentioned in subparagraphs (c) and (d) dealing with separation from parents and family reunification, respectively. With regard to the concept of abuse and neglect (subpara. (g)), she proposed the addition of that of torture, which would mean drafting a new paragraph to combine those two concepts or referring in subparagraph (g) to article 37 of the Convention, which dealt with torture in particular. Lastly, she suggested that the idea of periodic review of placement (subpara. (j)) should be included in a separate chapter.

69. Mrs. EUFEMIO said that the problem of refugee children, mentioned in article 22, paragraph 1, of the Convention, should be referred to in connection with periodic review of placement (subpara. (j)). She also proposed that reference should be made to the question of disabled children (art. 23), whose care within the family environment would require assistance for the parents.

70. Mgr. BAMBAREN GASTELUMENDI proposed that the words "and control of adoption" should be added after the word "adoption" in subparagraph (i) and that the reference to article 21 of the Convention should be supplemented by a reference to article 35.

71. Mr. SHAW (World Food Programme) said that the text of the Convention often reflected a Western bias, which appeared nowhere as clearly as in the heading "Parental or foster care and adoption". He fully endorsed Mrs. Santos País' proposal to the effect that a precise definition of the concept of family should be formulated. In many third world countries, children were cared for by a much wider group than the family unit and their development did not suffer at all.

72. Paragraph 9 listed situations that were unfavourable to children without going deeply enough into certain problems. Parents might be unable to fulfil their responsibilities towards children for reasons beyond their control (economic crisis or disasters). It was therefore important to draw the attention of Governments, in that heading especially, to problems relating to employment and wage-earning activities in general.

73. The CHAIRMAN, summing up the debate, said that the members of the Committee had made several proposals under the heading parental or foster care and adoption: definition of the concept of family; changes in the wording of subparagraph (h); combining subparagraphs (a) and (f); reference in subparagraph (e) to articles 27 and 35 of the Convention; reference to article 37 in subparagraph (g); elaboration of the concept of periodic review of placement (subpara. (j)) in a separate paragraph; inclusion of subparagraphs relating to the problems of refugee children and disabled children; and need to view certain concepts with less of a Western bias and more in terms of the situation of third world countries.

74. Since the consideration of paragraph 9 had not been completed, she proposed that the Committee should come back to it at its next meeting.

75. It was so decided.

The meeting rose at 6.05 p.m.